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**COMMISSION REGULATION (EEC) No 2173/79**

**of 4 October 1979**

**on detailed rules of application for the disposal of beef bought in by intervention agencies and  
repealing Regulation (EEC) No 216/69**

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**on detailed rules of application for the disposal of beef bought in by  
intervention agencies and repealing Regulation (EEC) No 216/69**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 805/68 of 27 June 1968 on the common organization of the market in beef and veal <sup>(1)</sup>, as last amended by Regulation (EEC) No 425/77 <sup>(2)</sup>, and in particular Articles 7 (3) and 25 thereof,

Having regard to Council Regulation (EEC) No 878/77 of 26 April 1977 on the rates of exchange to be applied in agriculture <sup>(3)</sup>, as last amended by Regulation (EEC) No 2139/79 <sup>(4)</sup>,

Whereas products bought in by intervention agencies pursuant to Articles 5 and 6 of Regulation (EEC) No 805/68 must be disposed of in such a way as to avoid disturbance of the market and to ensure equal access to the products and equal treatment of purchasers;

Whereas Article 2 of Council Regulation (EEC) No 98/69 <sup>(5)</sup>, provides that selling prices may be fixed in advance or determined by means of an invitation to tender;

Whereas equal access to the products and equal treatment of purchasers can be ensured if, when the selling price is fixed in advance, the intervention agencies accept applications in the order in which they are received, all applications received on any one day being treated as having been received simultaneously, until supplies are exhausted;

Whereas, where the selling price is determined by means of an invitation to tender, these principles can be respected by publishing the invitation in good time in the *Official Journal of the European Communities*, in addition to its possible display at the offices of the intervention agency concerned and to any other national publicity;

Whereas, since the object of the tendering procedure is to obtain the best price, the award must go to the highest tender; whereas there should also be provision for the case in which more than one tender is submitted at the same price for the same quantity; whereas, however, the highest price can be accepted only if it corresponds to the actual market situation; whereas minimum selling prices should therefore be determined, in accordance with a Community procedure, having due regard to the tenders received;

Whereas, to ensure efficiency in the disposal of stored products, minimum sale quantities should be laid down, varying according to the particular marketing conditions applying to each product;

Whereas invitations to tender and applications must include sufficient information to allow proper identification of the products concerned;

Whereas the submission of an application or a tender is facilitated if prospective purchasers are permitted to inspect the products; whereas it should consequently be provided that the parties concerned waive in advance their right to lodge any complaint in respect of the quality and characteristics of the product which may be assigned to them;

<sup>(1)</sup> OJ No L 148, 28. 6. 1968, p. 24.

<sup>(2)</sup> OJ No L 61, 5. 3. 1977, p. 1.

<sup>(3)</sup> OJ No L 106, 29. 4. 1977, p. 27.

<sup>(4)</sup> OJ No L 246, 29. 9. 1979, p. 76.

<sup>(5)</sup> OJ No L 14, 21. 1. 1969, p. 2.

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Whereas fulfilment of the obligations contracted must be guaranteed through the lodging of a security which can be partly or wholly forfeited depending on the gravity of the breaches involved; whereas the additional cost involved when a contract is only partly executed justifies complete forfeiture when less than 60 % of the quantity initially contracted for is taken over;

Whereas it should be left to Member States to adopt their own positions as to the gravity of breaches of certain subsidiary obligations included in sale contracts, having regard to their great diversity;

Whereas, so that these operations may be carried out expeditiously, it should be laid down that the rights and obligations involved in a sale contract or a tender must be exercised or fulfilled within certain time limits;

Whereas Member States should inform the Commission at regular intervals of the quantities sold so that the Commission may be able to assess the progress of disposal;

Whereas, in order to facilitate the sale procedures mentioned above, dates must be fixed for the determination of the exchange rate used to convert prices fixed in advance into national currency and to determine the minimum sale price and convert it into national currency;

Whereas under Article 4 (2) of Council Regulation (EEC) No 1134/68 <sup>(1)</sup> the sums defined therein are paid on the basis of the conversion rate which obtained at the time when the operation or part thereof was carried out; whereas Article 6 of the abovementioned Regulation defines the time when an operation is carried out as the date on which occurs the event defined by Community rules, or, in the absence of and pending adoption of such rules, by the rules of the Member State concerned, as a result of which the amount involved in the operation becomes due and payable; whereas, however, under the terms of Article 4 (3) of Regulation (EEC) No 878/77 exceptions may be granted to the abovementioned provisions;

Whereas the measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Beef and Veal,

HAS ADOPTED THIS REGULATION:

*Article 1*

Intervention agencies appointed by the Member States shall put up for sale products bought in pursuant to Articles 5 and 6 of Regulation (EEC) No 805/68 in accordance with the provisions of Article 7 (1) of that Regulation, of Regulation (EEC) No 98/69 and of this Regulation.

TITLE I

**Sales at prices fixed in advance**

*Article 2*

1. The purchase application shall be submitted to the intervention agency in writing. It shall be deemed valid for consideration on the day when the security specified in paragraph 2 is received.

2. In order to be deemed valid for consideration, the application must:

<sup>(1)</sup> OJ No L 188, 1. 8. 1968, p. 1.

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- (a) specify the name and address of the purchaser;
- (b) give an accurate description of the product;
- (c) specify the quantity applied for and the price fixed;
- (d) include a declaration whereby the applicant waives all claims as to the quality and characteristics of the product which may be assigned to him.

The application may also name, in order of preference, the cold store or stores where the products applied for are stored. The application must be supported by a security in favour of the intervention agency.

3. The purchase application shall be rejected if the security is not lodged with the intervention agency, or provided for to the satisfaction of the intervention agency, within five working days following its submission in accordance with paragraph 1.

*Article 3*

1. The intervention agency shall deem valid for consideration each day all complete applications presented in accordance with Article 4. Applications deemed valid for consideration on any particular day shall be considered as having been submitted simultaneously.

2. Save in exceptional circumstances applications shall be accepted within five working days following their submission until stocks are exhausted. Where, taken together, the applications received at the same time exceed the quantity available, the intervention agency may apportion the quantity available, where appropriate, in agreement with the purchasers concerned, or hold a ballot.

3. The intervention agency shall, within the time limit provided for in paragraph 2, notify each applicant of the decision taken on his application.

*Article 4*

1. The date of submission of the complete application shall be the day on which it is received by the intervention agency, provided that this occurs not later than 2 p.m. local time.

2. Complete applications which reach the intervention agency concerned on a day which is not a working day for that agency, or on a working day for that agency but later than the hour referred to in paragraph 1, shall be deemed to have been submitted on the first working day following the day on which they were received.

*Article 5*

The exchange rate applied to sale prices fixed in advance in ECU shall be the representative rate in force on the day on which the application is deemed valid for consideration under Article 3 (1).

## TITLE II

**Sale at a price determined by an invitation to tender***Article 6*

1. Each invitation to tender shall relate to specific quantities.
2. Invitations to tender shall be published in the *Official Journal of the European Communities*.

In addition, intervention agencies may post a notice of such invitations at their head offices and announce them by other means.

3. Invitations to tender shall be published in the *Official Journal of the European Communities* at least 14 days before the expiry of the period for the submission of tenders.

**▼B***Article 7*

Each invitation to tender shall include the following information:

- (a) description of the products and the date before which they were bought in;
- (b) the name and address of the cold store or stores where the products are held;
- (c) for each cold store, the quantities of each product offered for tender;
- (d) the closing date and the address for the submission of tenders;
- (e) where appropriate, a statement that tenders may be submitted by telex.

*Article 8*

1. Tenders shall be submitted in writing to the intervention agency against acknowledgement or by letter addressed to the intervention agency. The intervention agency may allow a tender to be submitted by telex.

2. In order to be deemed valid for consideration, the tender must specify:

- (a) the name and address of the tenderer;
- (b) a description of the products and the quantity for which the tender is made, indicating at which cold store or stores they are held;
- (c) the price offered per tonne, expressed in the currency of the Member State whose intervention agency has issued the invitation to tender;
- (d) a statement by the tenderer waiving all claims in respect of the quality and characteristics of a product awarded to him;
- (e) any additional information required by the invitation to tender.

The tender must be accompanied by a security lodged with the intervention agency, or provided for to the satisfaction of the intervention agency.

*Article 9*

In the light of the tenders received, minimum selling prices shall be fixed for the products in question in accordance with the procedure laid down in Article 27 of Regulation (EEC) No 805/68.

*Article 10*

1. Tenders for less than the minimum selling price shall be refused.

2. Subject as provided in paragraph 1, contracts shall be awarded to the highest tenderers. Where more than one tender at the same price is received for the same quantity and where the quantities applied for exceed the quantity available, the intervention agency may apportion the quantity available, where appropriate, in agreement with the tenderers, or hold a ballot.

*Article 11*

Each tenderer shall be notified by the intervention agency concerned of the result of his participation in the invitation to tender.

This information shall be sent within five working days of the communication by telex to the Member States of the decision fixing the minimum prices.

**▼B***Article 12*

The exchange rate used to convert  
 — tenders into ECU, and  
 — minimum sale prices into national currency,  
 shall be the representative rate in force on the closing day for the  
 submission of tenders.

## TITLE III

**General provisions***Article 13*

Intervention agencies shall make all necessary arrangements to enable  
 prospective tenderers to inspect the products for sale before making  
 their applications or submitting their tenders.

*Article 14*

The application or tender shall be in one of the official languages of the  
 Community.

However, intervention agencies may require that applications or tenders  
 submitted in a language which is not a language of the Member State  
 concerned be accompanied by a translation.

Where an intervention agency avails itself of this option, it shall inform  
 the Commission and the other intervention agencies at least 10 days in  
 advance. The special conditions of this requirement shall be communi-  
 cated to traders through the normal channels.

**▼M1***Article 15*

1. The security referred to in Article 2 (2) and Article 8 shall be 50  
 ECU per tonne.

It shall ensure satisfaction of the obligations laid down in this Regula-  
 tion and the conditions laid down in the contract of sale with the  
 exception of those covered by a specific security.

2. The security shall be released forthwith if the purchase application  
 or tender is not accepted.

3. The primary requirements within the meaning of Article 20 of  
 Commission Regulation (EEC) No 2220/85 <sup>(1)</sup> shall be:

- (a) a requirement not to withdraw the purchase application or tender;
- (b) payment for the quantity of the product fixed in the contract by the  
 stipulated time limit;
- (c) taking over of the quantity paid.

However, the payment requirement shall be deemed to have been met if  
 more than 95 % of the quantity of the product stipulated in the contract  
 is paid for.

4. Article 27 of Regulation (EEC) No 2220/85 shall apply only in the  
 case referred to in Article 16 (2) (a).

**▼B***Article 16*

1. If the purchaser does not pay for the product within the time limit  
 specified in Article 18 (1) the contract shall, without prejudice to the  
 provisions of paragraph 2 ►**M1**—————◄, be cancelled by the  
 intervention agency in respect of the quantity not paid for.

<sup>(1)</sup> OJ No L 205, 3. 8. 1985, p. 5.

**▼B**

2. Except in cases of *force majeure* the security shall be forfeit:
- (a) in proportion to the quantity not paid for within the specified time limit, if the quantity paid for is not less than 60 % and not more than 95 % of the quantity covered by the contract;
  - (b) in total, if the quantity paid for is less than 60 % of the quantity covered by the contract.

**▼M1****▼B***Article 17*

1. The selling price shall apply to gross weight in the case of unboned meat and to net weight in the case of boned and preserved meat, exclusive of domestic taxation, free at the loading bay of the cold store where the products are in store. For boned meat, net weight shall be regarded as the difference between the gross weight ascertained at the loading bay of the cold store and the average weight of packaging determined before its use.

2. In the case of sales which do not provide for a special destination or use, the minimum quantity of product per application or tender shall be:

- five tonnes, in the case of unboned meat,
- two tonnes, in the case of boned or preserved meat.

If the quantity available at the delivery point or cold store is less than five tonnes or two tonnes respectively, the quantity available shall constitute the minimum quantity.

*Article 18*

1. The purchaser shall take delivery of the product within one month of the acceptance date referred to in Article 3 (2) or of the notification referred to in Article 11. The costs and risks in respect of additional storage for all quantities not taken over within this period shall be borne by the purchaser.

2. Delivery shall be taken of the goods in accordance with intervention agency rules for release from storage and no claims to any particular lots shall be allowed. In the case of an invitation to tender or where the purchase application referred to in Article 2 (2) names preferred cold stores, the goods shall be made available within the limits of the quantities available.

*Article 19*

The price shall be paid, as and when the goods are taken over and in proportion to the quantities to be withdrawn, at the latest the day before each removal. ► **M1** The modifications eventually necessary are operable within 15 working days following the date of the definitive invoice ◀ .

*Article 20*

Member States shall inform the Commission at the beginning of every fortnight of the quantities sold during the previous fortnight.

*Article 21*

1. Commission Regulation (EEC) No 216/69 <sup>(1)</sup> is hereby repealed.
2. Any reference in a Community Act to the Regulation repealed by paragraph 1 or to any Article of that Regulation shall be construed as a reference to this Regulation or to the corresponding Articles of this Regulation.

<sup>(1)</sup> OJ No L 28, 5. 2. 1969, p. 10.

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*Article 22*

This Regulation shall enter into force on 1 November 1979.

However, the provisions of Article 16 (3) shall apply also in respect of contracts performed before the entry into force of this Regulation where the release of the security has not finally been decided upon.